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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

MYRON D. JORDAN,

Plaintiff and Appellant,

v.

BOARD OF CIVIL SERVICE
COMMISSIONERS OF THE CITY OF
LOS ANGELES,

Defendant and Respondent.

B265360

(Los Angeles County
Super. Ct. No. BS 149501)

APPEAL from an order of the Superior Court of Los Angeles County,
Robert H. O'Brien, Judge. Affirmed.

Myron D. Jordan, in pro. per., for Plaintiff and Appellant.

Michael N. Feuer, City Attorney, Vivienne A. Swanigan, Assistant City
Attorney, and Jennifer Gregg Handzlik, Deputy City Attorney, for Defendant and
Respondent.

INTRODUCTION

Myron D. Jordan, a refuse collection truck operator with the City of Los Angeles, Department of Public Works, Bureau of Sanitation (Department), appeals from the denial of his petition for a writ of mandate. The trial court denied the petition after determining that the Department properly discharged Jordan for failure to meet a condition of employment, viz., possession of a valid Class B driver's license. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Appellant was initially employed by the City of Los Angeles (City) as a Parking Attendant I with the Department of General Services from March 28, 1995 to June 1, 1996. On December 7, 1997, he was appointed to an exempt position as a Vocational Worker I with the Department of Public Works, Bureau of Street Services. Subsequently, he received two promotions: Maintenance Assistant, on February 20, 2001, and Street Services Worker I, on May 20, 2001. On July 28, 2003, appellant was promoted to refuse collection truck operator with the Department.

On the night of August 3, 2012, appellant was arrested for suspicion of driving under the influence (DUI). His blood alcohol level tested at 0.13 percent. Subsequently, the Department of Motor Vehicles (DMV) suspended appellant's commercial Class B driver's license for one year, from November 2, 2012 to November 1, 2013.

Following the suspension of appellant's Class B driver's license, appellant's immediate supervisor requested an investigation to determine the suitable corrective action for appellant's failure to meet a condition of employment, viz., possession of a valid Class B license. Following the investigation, it was

recommended that appellant be terminated based on his failure to maintain a Class B driver's license.

Pursuant to *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194 (*Skelly*), appellant was given notice of the proposed termination, the basis for the proposed disciplinary action, and an opportunity to respond. At the *Skelly* hearing, appellant appeared with his union representative. The representative requested that appellant be allowed to revert to a position that would not require a Class B driver's license. Subsequently, the Department considered the request for reversion and denied it based on appellant's disciplinary history. Appellant had failed two drug tests, for which he received a five-day and 20-day suspension, respectively, and had received a two-day suspension for causing an accident while operating his refuse vehicle. Before making its decision to terminate appellant, the Department consulted the Department of Public Works Personnel Policy No. 7, Guide to Employee Discipline, which recommended discharge for an employee whose first offense is "Failure to meet a condition of employment (e.g., loss of license)." On March 6, 2013, appellant was terminated from his position as a refuse collection truck operator for failure to meet a condition of employment, viz., possession of a valid class B driver's license.

On March 7, 2013, appellant filed an appeal from his discharge with the Board of Civil Service Commissioners (the Board). At the June 13, 2013 hearing, the Department presented evidence that a valid California Class B driver's license is required to be employed as a refuse collection truck operator or as a street services worker. William Wolfe, a senior personnel analyst with the human resources office for the Department of Public Works, testified that based on his 23 years of experience, the Department's practice -- pursuant to its personnel policy -- has been to discharge, for a first offense, those employees who fail to

meet a condition of employment. Wolfe also testified that appellant's request for reversion to street services worker could not be approved because that position required a Class B driver's license. Finally, he stated that the Department, as a practice, does not approve requests for leaves of absence for employees facing discharge for failure to meet a condition of employment. Appellant argued that he had not been convicted of a DUI. He stated that only four and a half months remained until his license would no longer be suspended, and noted that he had a "work status report . . . from Kaiser Hospital," stating that he would be unable to work from April 30, 2013 through November 1, 2013. Appellant admitted he did not have a valid Class B driver's license on March 6, 2013, the date of his discharge, or on June 13, 2013, the day of the hearing on his appeal.

Following the hearing, the hearing examiner issued a written report containing her findings and recommendations. The examiner found that appellant could not perform the duties of his job for a one-year period, and that he failed to meet a condition of his employment. She further found there was no evidence that similarly situated employees were treated differently, and that there was no job class to which appellant could have been reassigned that did not require a Class B driver's license. She recommended that the Board find the due process provisions of *Skelly* were met, that the cause of action for failure to meet a condition of employment by not possessing a valid Class B driver's license was sustained, and that the discharge effective March 6, 2013 was appropriate.

On August 22, 2013, the Board held a meeting to consider the hearing examiner's recommendations. Appellant and Wolfe both appeared and presented oral arguments. Appellant asked to be reverted to the position of maintenance assistant. Wolfe advised the Board that appellant did not have reversion rights to that position, and a commissioner noted that there was no vacancy. In response to

a question from another commissioner, Wolfe stated that on some occasions, the Department had assisted employees who had lost their Class B driver's license through no fault of their own, e.g., due to a medical condition. He explained that the Department did so due to its legal obligations to assist people with disabilities, and stated that license suspension for a period greater than one month would cause the Department to "think hard about the discharge." According to Wolfe, the Department could not wait a year for an employee to reacquire a valid license. He also noted that appellant's document from Kaiser indicating appellant was unable to work was dated April 15, 2013, a month after appellant's employment was terminated. Following the arguments, the Board unanimously adopted the hearing examiner's findings and sustained the discharge.

On November 19, 2013, appellant filed a "demand for reinstatement," based on his contention that the DUI charge had been dismissed, and that he then possessed a Class B driver's license. On December 19, 2013, the Board denied the demand for reinstatement.

On June 23, 2014, appellant filed a petition for a writ of mandate, seeking to have the City of Los Angeles and the Board set aside his discharge and restore him to his position as a refuse collection truck operator. At the June 30, 2015 hearing on the petition for mandate, the trial court noted that the petition addressed only appellant's initial termination, not his demand for reinstatement. Appellant agreed. On July 1, 2015, the trial court denied the petition for mandate. In its statement of decision, the court noted that appellant had sought relief regarding his initial termination only. It concluded the initial termination was proper. It further concluded that appellant had failed to demonstrate that he was on medical leave starting in November 2012, that reversion was a possible alternative to termination,

that the hearing examiner was biased, or that similarly-situated employees were treated differently.

Appellant timely noticed an appeal from the trial court's order denying his petition for a writ of mandate.

DISCUSSION

A. Standard of Review

Because discipline imposed on city employees affects their fundamental vested right in their employment, the trial court was required to exercise its independent judgment in determining whether the Board's findings were supported by the weight of the evidence. (*McMillen v. Civil Service Com.* (1992) 6 Cal.App.4th 125, 129.) "In exercising its independent judgment, a trial court must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence." (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817.)

On an appeal from the trial court's order sustaining an administrative decision to impose discipline, we review the appellate record to determine whether the trial court's findings are supported by substantial evidence. (*Fukuda v. City of Angels, supra*, 20 Cal.4th at p. 817.) "Evidence is substantial if any reasonable trier of fact could have considered it reasonable, credible and of solid value." (*Kazensky v. City of Merced* (1998) 65 Cal.App.4th 44, 52.) "In reviewing the evidence, an appellate court must resolve all conflicts in favor of the party prevailing in the superior court and must give that party the benefit of every reasonable inference in support of the judgment. When more than one inference can be reasonably deduced from the facts, the appellate court cannot substitute its

deductions for those of the superior court. [Citation.]” (*Pasadena Unified Sch. Dist. v. Commission on Professional Competence* (1977) 20 Cal.3d 309, 314.) “This court, however, independently determines questions of law.” (*Jackson v. City of Los Angeles* (2003) 111 Cal.App.4th 899, 902.)

B. *Petition for Writ of Mandate*

The trial court concluded that appellant’s initial termination was appropriate. The record demonstrates -- and appellant does not dispute -- (1) that appellant’s position as a refuse collection truck operator required a valid Class B driver’s license; (2) that appellant did not possess a valid Class B license from November 2, 2012 through November 1, 2013; and (3) that appellant was discharged for failure to maintain a valid Class B driver’s license. Based on these facts, the Board’s finding that the discharge was appropriate was supported by the weight of the evidence.

On appeal, appellant contends he had a permissive right and eligibility to reinstatement. ~(Appellant’s Opening Brief, at p. 8.)~ Appellant has forfeited this argument. First, when asked by the trial court, appellant confirmed that his petition addressed only his initial discharge, not his request for reinstatement. ~(RT 1-2.)~ Moreover, when the trial court’s statement of decision expressly stated that its ruling was limited to the initial discharge, appellant filed no objection. Not until this appeal did he challenge the propriety of the denial of his request for reinstatement. Accordingly, the issue is forfeited.

Even were we to consider the argument, we would reject it. Citing Government Code sections 19141, subdivision (c) and 19585, appellant contends he was eligible for reinstatement as a refuse collection truck operator. ~(See AOB at p. 8.)~ Those statutory provisions are part of the State Civil Services Act,

Government Code section 18500 et seq., and by its terms, the State Civil Services Act applies only to employees of the State. It does not govern City employees. (See Gov. Code, § 18500, subd. (c) [purposes of State Civil Services Act are to (1) facilitate the operation of article VII of the California Constitution, (2) promote and increase economy and efficiency in the state service, and (3) provide a comprehensive personnel system for the state civil service]; Cal. Const., art. VIII, § 1, subd. (a) [“The civil service includes every officer and employee of the State except as otherwise provided in this Constitution”].) The city charter governing the terms and conditions of employment for city employees permits a discharged employee to file a demand for reinstatement. The demand for reinstatement, however, is “concerned with fixing a time limit and formalities necessary as a basis for court action, presupposing that the procedure before the board has been followed. The demand may be somewhat analogous to the requirement of a petition for a rehearing addressed to the board. The board is given an additional opportunity to pass upon the issue before resort is had to the courts.” (*Steen v. Board of Civil Service Comm’rs* (1945) 26 Cal.2d 716, 722.)

In his demand for reinstatement, appellant argued he should be reinstated because the DUI charge was dismissed, and he then possessed a valid Class B driver’s license. However, appellant’s license was not restored until November 1, 2013, nearly eight months after he was discharged. Given that appellant could not meet a condition of employment for a period of a year, and in light of his prior disciplinary history, we cannot conclude that appellant’s discharge was inappropriate. In short, appellant has not demonstrated that the Board erred in denying his demand for reinstatement.

DISPOSITION

The order denying appellant's petition for writ of mandate is affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

COLLINS, J.